

refusal to give these requests raises the only federal question in the case.

Conceding, without deciding, that the Federal Employers' Liability Act applied to the circumstances of this case, nevertheless the two requests were properly refused. A request to charge must be calculated to give the jury an accurate understanding of the law having reference to the phase of the case to which it is applicable. *Norfolk & Western Ry. Co. v. Earnest*, 229 U. S. 114, 119. The first request simply asked a broad charge that if the plaintiff voluntarily, for his own convenience, went upon the tracks of the railroad, and the railroad was at the time being used and operated as a highway of interstate commerce, he assumed the risk and danger of so using the tracks. This request omitted elements essential to make assumption of risk applicable to the case. It failed to call attention to the circumstances under which the testimony tended to show the plaintiff was using the tracks at the time, and the knowledge of conditions which should have been taken into consideration in order to attribute assumption of risk to him. It failed to take into account the undisputed testimony that the engine ran into Marietta without signal or warning to him. Under such circumstances the injured man would not assume the risk attributable to the negligent operation of the train, if the jury found it to be such, unless the consequent danger was so obvious that an ordinarily prudent person in his situation would have observed and appreciated it. *Chesapeake & Ohio Ry. Co. v. De Atley*, 241 U. S. 310, 313, 314; *Chesapeake & Ohio Ry. Co. v. Proffitt*, 241 U. S. 462, 468, and cases cited.

The second request pertained to the conduct of the plaintiff, in view of the particular situation, and what he should have done to protect his safety, considering his danger at the time, and is open to the same objections. This request did not cover the elements of assumed risk

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and was more properly applicable to the defense of contributory negligence, concerning which the court must be presumed to have given proper instructions to the jury.

*Affirmed.*